

GCI Communication Corp.
2550 Denali Street, Suite 1000
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1 Act. Furthermore, the FCC has issued both an order² and a rule³ explicitly
2 forbidding state commissions from imposing Section 251(c) obligations on CLECs.
3 The order and rule further clarify that the FCC – and only the FCC – has the
4 authority to grant requests to treat a CLEC as an ILEC for purposes of Section 251.
5 The FCC's rules are consistent with the Supreme Court's understanding of the
6 purposes of the 1996 Act – which, the Court explained, was enacted “on the
7 understanding that incumbent monopolists and contending competitors are
8 unequal,” citing “§ 251(c) (‘Additional obligations of incumbent local exchange
9 carriers’).”⁴ In any event, the wisdom of the FCC rules are not subject to challenge
10 in this proceeding. In view of the FCC's well-settled authority to promulgate rules
11 implementing Section 251, this Commission must reject ACS's proposal to impose
12 the Section 251(c) obligations on GCI.
13
14

15 **A. The FCC Has Concluded That Section 251(c) Obligations**
16 **May Not Be Applied To Competitive Local Exchange**
17 **Carriers In Arbitration Proceedings.**

18 The obligations set forth in Section 251(c) apply to “incumbent local
19 exchange carriers” and GCI is not an ILEC.⁵ On its face, therefore, the obligations
20

21 ² *Implementation of the Local Competition Provisions in the Telecommunications Act*, First Report and
22 *Order*, CC Docket No. 96-98 and 95-185, 11 FCC Red. 15499, 15518, 16109 (1996).

23 ³ 47 C.F.R. § 51.223.

24 ⁴ *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 533 (2002).

25 ⁵ “Incumbent local exchange carrier” is defined in Section 251(b)(1) as :

26 ... with respect to an area, the local exchange carrier that ~

27 (A) on February 8, 1996, provided telephone exchange service in such area; and

(B) (i) on February 8, 1996, was deemed to be a member of the exchange carrier association
pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R.
69.601(b)); or

1 in Section 251(c) do not apply to GCI. In addition, in the *First Report and Order*
2 implementing the 1996 Act, the FCC concluded that "allowing states to impose on
3 non-incumbent LECs obligations that the 1996 Act designates as 'Additional
4 Obligations of Incumbent Local Exchange Carriers,' distinct from obligations on all
5 LECs, would be inconsistent with the statute."⁶ The FCC then issued a rule,
6 codified as 47 C.F.R. § 51.233(a), formalizing this conclusion:
7

8 A State may not impose the obligations set forth in section
9 251(c) of the Act on a LEC that is not classified as an
10 incumbent LEC as defined in section 251(h)(1) of the Act,
11 unless the Commission issues an order declaring that such
12 LECs or classes or categories of LECs should be treated as
13 incumbent LECs.

14 Although state commissions are precluded from imposing Section
15 251(c) obligations on CLECs, the Act established a process by which those
16 obligations may be extended to CLECs. Specifically, Section 251(h)(2) provides
17 that the FCC "may, by rule, provide for the treatment of a local exchange carrier (or
18 class or category thereof) as an incumbent local exchange carrier for purposes of
19 this section" if certain requirements are met.⁷ In the *First Report and Order* the
20 FCC stated that it "anticipate[s] that we will not impose incumbent LEC obligations

21 (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign
22 of a member described in clause (i).

23 ⁶ First Report and Order, *supra* note 2, at 16109.

24 ⁷ Those requirements are:

- 25 (A) such carrier occupies a position in the market for telephone exchange service within an
26 area that is comparable to the position occupied by a carrier described in paragraph (1);
27 (B) such carrier has substantially replaced an incumbent local exchange carrier described in
paragraph (1); and
(C) such treatment is consistent with the public interest, convenience, and necessity and the
purposes of this section.

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1 on non-incumbent LECs absent a clear and convincing showing that the LEC
2 occupies a position in the telephone exchange market comparable to the position
3 held by an incumbent LEC, has substantially replaced an incumbent LEC, and that
4 such treatment would serve the public interest, convenience, and necessity and the
5 purposes of section 251.⁸

6
7 However, the FCC provided a process implementing Section 251(h)(2)
8 by adopting 47 C.F.R. § 51.223(b), which provides:

9 A state commission, or any other interested party, may
10 request that the Commission issue an order declaring that a
11 particular LEC be treated as an incumbent LEC, or that a
12 class or category of LECs be treated as incumbent LECs,
13 pursuant to section 251(h)(2) of the Act.

14 Clearly, an arbitration proceeding is not the proper forum for
15 entertaining ACS's petition to bring GCI within the scope of Section 251(c). ACS
16 must instead submit its request directly to the FCC as required by Section 251(h)(2)
17 of the Act, the *First Report and Order*, and Section 51.233(b) of the FCC's rules.
18 Because the criteria in the Act and the FCC rule plainly have not been met, such a
19 request is unlikely to succeed at the FCC, but that is where the request must be
20 made.

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25 ⁸ *First Report and Order*, *supra* note 2, at 16110.

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B. The FCC's Rule That The Obligations Imposed By Section 251(c) Do Not Apply To Competitive Local Exchange Carriers Is Not Subject To Challenge In This Proceeding.

In its *Verizon* decision, the Supreme Court explained why Congress imposed more extensive obligations on incumbents than competitors. After reviewing the advantages of the companies that held a monopoly in their markets on local exchange service prior to the enactment of the 1996 Act, the Court said that "[i]t is easy to see why a company that owns a local exchange (what the Act calls an 'incumbent local exchange carrier,' 47 U.S.C. § 251(h)), would have an almost insurmountable competitive advantage."⁹ In light of the advantages the incumbents derived from decades of existence as protected monopolies, the Court concluded, the scheme of the Act is "to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents' property."¹⁰ Thus, there is a sound reason for the FCC to have concluded that the additional obligations Congress imposed on ILECs should not normally be applied to CLECs.

In any event, this is not the forum to challenge the FCC's rules. The FCC's authority to issue binding rules implementing the 1996 Act was subject to extensive litigation, of course, and in *AT&T Corp. v. Iowa Utilities Board* the Supreme Court concluded that "The FCC has rulemaking authority to carry out the 'provisions of [the Communications Act of 1934],' which include §§ 251 and 252,

⁹ *Verizon*, 535 U.S. at 490.

1 added by the Telecommunications Act of 1996."¹¹ The statute makes clear in
2 Section 252(c)(1) that state commissions arbitrating interconnection agreements
3 must make sure those agreements "meet the requirements of section 251, including
4 the regulations prescribed by the" FCC. State commissions are not authorized to
5 ignore or overrule those regulations.

6
7 In *MCI Telecommunication Corp. v. Bell Atlantic Pennsylvania*, the
8 Third Circuit accordingly held that interconnection agreements "must comply with
9 the Act and with FCC regulations; if the approved agreement, containing the state
10 commission's interpretations of the law, conflicts with the legal interpretations in
11 the FCC regulations, the FCC interpretation must control under the Supremacy
12 Clause and under the plain language of the Act."¹² Similarly, the Sixth Circuit
13 stated: "Of course, we consider the FCC's interpretation of the Act persuasive
14 authority because Congress authorized the FCC to issue rules 'to implement the
15 requirements' of § 251."¹³

16
17 Federal courts addressing the question of whether state commissions
18 may impose Section 251(c) obligations on CLECs have also affirmed that the FCC
19 has exclusive authority over that issue. In *U.S. West Communication, Inc. v.*
20

21
22 ¹⁰ *Id.* at 489.

23 ¹¹ *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 378 (1999). The majority opinion went on to state
24 that "the question in these cases is not whether the Federal Government has taken the regulation of local
25 telecommunications competition away from the States. With regard to the matters addressed by the 1996
26 Act, it unquestionably has." *Id.* n. 6.

27 ¹² 271 F.3d 491, 516 (3rd Cir. 2001).

¹³ *Michigan Bell Telephone Co. v. Strand*, 305 F.3d 580, 586 (6th Cir. 2002)

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1 *Jennings*, for example, a district court overturned the Arizona Corporation
2 Commission's decision to require CLECs to unbundle network elements – a Section
3 251(c) requirement.¹⁴ In that case, decided before the Supreme Court in *Verizon*
4 explained that Congress very clearly intended to treat CLECs differently than
5 ILECs, the court expressed doubts as to the merits of the FCC's rule stating that the
6 obligations of Section 251(c)(3) normally should not be extended to CLECs, but
7 recognized that it must apply the rule because, "Under the Hobbs Act, 28 U.S.C. §
8 2342, the FCC's regulation may be challenged only in the Court of Appeals."¹⁵ In
9 like vein, the district court of Connecticut stated in *MCI Telecommunications Corp.*
10 *v. Southern New England Telephone Co.*¹⁶ that the issue of whether it would be
11 appropriate to treat a CLEC as an ILEC under Section 251(h)(2) is "one that the
12 1996 Act explicitly places within the jurisdiction of the FCC."¹⁷

13
14
15 In short, should ACS wish to challenge the FCC's regulation prohibiting
16 states from imposing Section 251(c) obligations on CLECs, its only recourse is to
17 ask the FCC to change its rules and, if the FCC declines, challenge that decision in a
18 federal appellate court pursuant to the Hobbs Act, 28 U.S.C. § 2342(1).¹⁸ But as the

19
20
21 ¹⁴ *U.S. West Communication, Inc. v. Jennings*, 46 F. Supp.2d 1004 (Ariz. 1999).

22 ¹⁵ *Id.* at 1020.

23 ¹⁶ *MCI Telecommunications Corp. v. Southern New England Telephone Co.*, 27 F.Supp.2d 326, 327 (Conn. 1998).

24 ¹⁷ *Id.* at 337.

25 ¹⁸ 28 U.S.C. § 2342, which provides that:

26 The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has
27 exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the
validity of -

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1 Supreme Court explained in *Verizon*, under the 1996 Act Congress deliberately and
2 with good reason imposed certain obligations on the incumbent monopolists and not
3 on competitors. Alternatively, as discussed previously, ACS could ask the FCC to
4 classify GCI as an ILEC under Section 251(h), even though that request also would
5 lack merit.

6
7 In any event, ACS' proposal that GCI be treated like an ILEC to the
8 extent that Section 251(c) obligations be made reciprocal in the proposed
9 Interconnection Agreement is utterly without merit.

10 Dated May 13, 2003 at Anchorage, Alaska.

11 Respectfully submitted,


12 GCI COMMUNICATION CORP.

13 By: 
14

15 **CERTIFICATE OF SERVICE**

16 I certify that on this 13 day of May 2003,
17 a copy of the foregoing was served via e-mail
18 and hand delivery on the following:

19 Paul Olson, Hearing Officer
20 Regulatory Commission of Alaska
21 701 W. Eighth Ave., Suite 300
22 Anchorage, Alaska 99501

23 David Shoup
24 Tindall, Bennet & Shoup
25 508 West 2nd Avenue, Third Floor
26 Anchorage, Alaska 99501
27 

Mark Moderow

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

U-96-89; RECIPROCITY: THE OBLIGATIONS SET FORTH IN SECTION 251(c)
DO NOT APPLY TO GCI.

May 13, 2003

Page 8 of 8

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Petition by GCI
COMMUNICATIONS CORP. d/b/a GENERAL
COMMUNICATION, INC., and d/b/a GCI for
Arbitration under Section 252 of the
Telecommunications Act of 1996 with the
MUNICIPALITY OF ANCHORAGE d/b/a
ANCHORAGE TELEPHONE UTILITY a/k/a ATU
TELECOMMUNICATIONS for the Purpose of
Instituting Local Exchange Competition

U-96-89
ORDER NO. 42

ORDER SETTING PRICES FOR ACCESS TO UNBUNDLED NETWORK
ELEMENTS, RESALE AND TERMS AND CONDITIONS OF
INTERCONNECTION

BY THE COMMISSION:

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1 dealing. We find these ethical and legal obligations adequate and require that the
2 provisions addressing these behaviors be omitted from the final contract version.

3 B. Reciprocity of Obligations

4 ACS-AN proposed contract language to make obligations under the
5 contract reciprocal for ACS-AN and GCI. Reciprocal obligations to provide unbundled
6 network elements to ACS-AN are not germane to this docket. The purpose of this
7 proceeding is to address the obligations of the incumbent local exchange carrier,
8 ACS-AN, under Section 251(c) of the Act. This docket is not the forum for consideration
9 of GCI's status as a CLEC or an ILEC and its obligations in the market. We require the
10 Parties to remove language related to reciprocal GCI obligations to ACS-AN.

11 C. Rates and Charges

12 Rates for services rendered under the contract are listed in Part C
13 Attachment II. Charges for services not included in Attachment II must be negotiated by
14 the parties and incorporated into the contract. The contract should not contain
15 provisions that allow ACS-AN to default to use of retail tariff rates when an
16 unanticipated service is required by GCI. We reject ACS-AN's proposed provision in
17 Part A section 1.1 as inconsistent with TELRIC standards that require a forward-looking
18 cost analysis. Retail tariff rates are set using embedded costs. Disputes regarding the
19 services included for particular charges should be resolved using the dispute resolution
20 procedures in the contract.

21 Work orders for overtime hours worked should be scheduled anonymously
22 so that overtime charges are not incurred by one party or the other in a discriminatory
23 manner. We adopted ACS-AN's model for nonrecurring charges; accordingly, any
24 contract language regarding cost elements included in these charges must be
25 consistent with that model. ACS-AN suggests that billing procedures have been
26



L

EXHIBIT L

STATE OF ALASKA
REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Investigation Into)
Disparities in Service Provided to)
Customers of a Competitive Local Exchange) Docket U-02-97
Carrier and an Incumbent Local Exchange)
Carrier)
_____)

REGULATORY COMMISSION OF ALASKA
HEARING ROOM
Anchorage, Alaska

VOLUME II
PUBLIC HEARING

October 22, 2002
8:30 o'clock a.m.

BEFORE: PATRICIA CLARK, HEARING EXAMINER

AND: PATRICIA M. DeMARCO, RCA, COMMISSIONER
WILL ABBOTT, RCA, COMMISSIONER
JAMES S. STRANDBERG, RCA, COMMISSIONER

APPEARANCES:

FOR GCI: MR. MARTIN M. WEINSTEIN
Regulatory Attorney
General Communications, Inc.
2550 Denali Street, Suite 1000
Anchorage, Alaska 99503

FOR ACS: MR. TED MONINSKI
ACS
600 Telephone Avenue
Anchorage, Alaska 99503-6091

1 HEARING EXAMINER CLARK: All right. Thank you,
2 Ms. Keeling. Mr. Weinstein, would you call your next witness?
3 MR. WEINSTEIN: Our next witness is Ms. Gina Borland.
4 HEARING EXAMINER CLARK: Thank you.
5 MR. WEINSTEIN: And (ph) our final witness.
6 HEARING EXAMINER CLARK: Ms. Borland, when you're read the
7 court reporter will swear you in.
8 MS. BORLAND: Okay.
9 COURT REPORTER: Would you raise your right hand, please?
10 (Oath administered)
11 MS. BORLAND: Yes, I do.
12 GINA BORLAND
13 called as a witness on behalf of GCI, testified as follows on:
14 DIRECT EXAMINATION
15 COURT REPORTER: You may lower your hand. Would you state
16 your full name for the record, please, and spell your last?
17 A Gina Borland. Last name is spelled B-o-r-l-a-n-d,
18 COURT REPORTER: Thank you.
19 HEARING EXAMINER CLARK: Mr. Weinstein.
20 BY MR. WEINSTEIN:
21 Q Ms. Borland, I wanted to ask you a few questions out the
22 outset about this no facility situation. Is it GCI's
23 practice to build copper plant?
24 A No, it is not our general practice. We do have the
25 location in Aurora that's already been mentioned, but no,

1 it is not our practice.

2 Q Would you characterize the Aurora Subdivision more as the
3 exception to the rule?

4 A It -- it is the exception, yes.

5 Q Does GCI have other plans for other -- for another type of
6 network that they may deploy in the future?

7 A Yes, we are making plans to have a network that we deploy
8 over our cable plant in the future.

9 Q And cable plant is different from the copper plant?

10 A Yes, it is different plant. Yes.

11 Q Is it your understanding that under the Communications Act
12 you have the right to request facilities or loops from the
13 incumbent?

14 A Yes, it is my understanding.

15 Q I should have asked you at the outset. What do you do at
16 the company.

17 A Oh.

18 Q Let me ask you that, what do you do for GCI?

19 A I am the vice president and general manager of local phone
20 service. I have had that position now since January of
21 last year, so almost two years now. And I have been with
22 GCI for almost 14 years.

23 Q And what are your responsibilities in the position that
24 you hold today?

25 A I am responsible for the local service profitability of

1 the business and everything that that may encompass with
2 regard to customer service and everything else within it.

3 Q How would you characterize the problem that exists today
4 between the two companies?

5 A I -- I would characterize the problem as GCI's customers
6 are being discriminated against in -- in not a minor way,
7 but in a gross way. And I -- I believe it has not been
8 resolved because ACS does not appear to think that GCI
9 customers need to have their orders completed in the same
10 time frame as their own. It doesn't appear to be a
11 mission nor a goal of theirs in any way. The -- the
12 result of that is -- is what you're now seeing in these
13 customers' complaints. The -- in my opinion and when I
14 heard last week that ACS had made a decision to eliminate
15 the backlog, to clear the backlog I guess I was a little
16 surprised to hear that, not -- I had not heard that
17 before. And I sure wish they had done it a long time ago
18 when it was first created so all this pain and suffering
19 did not occur by the customers all year. And -- and I
20 guess I'm the person here to speak for them.

21 Q Do you think the problem with the backlog could have been
22 solved sooner or fairly easily?

23 A I think it could have been solved very easily all along.
24 And the reason I say that is because if you -- if you look
25 at the size of our backlog which has ranged at any given

1 point in time from 1,300 to 2,300 orders at any point in
2 time and you look at the size of the processing capability
3 that ACS has, I -- I had estimated before seeing the --
4 the volume of orders that they're processing for
5 themselves I'd estimated theirs to be in the same
6 magnitude of ours so if they had about the same number of
7 orders as we do, then I believe they could have solved
8 this proc- -- problem with their processing power in two
9 to four days. -- Two to four days of processing capacity.
10 But I see they have much more capacity than I even had
11 assumed.

12 Q Let me ask you some process questions. Are you familiar
13 with the term warm ordering?

14 A I am, yes.

15 Q And what is that?

16 A Warm ordering is when a GCI back office person calls a
17 phone number to the -- to go to the ACS person that works
18 in what they refer to as their ALEC group, which is the
19 group that processes GCI's orders. It goes into an
20 automatic call distribution system so the next available
21 person in ACS's ALEC group will take the call when we
22 place the calls to place an order.

23 Q Do you know roughly when that process began between the
24 two companies?

25 A It -- it began in -- in late '98, early '99.

1 Q And when did it stop?

2 A It stopped gradually beginning in November of last year
3 when -- when ACS was not able to take all of our orders
4 over the phone. We would place calls, but we at the end
5 of the day had orders still sitting at GCI they didn't
6 have enough people on the phone taking our calls to take
7 all our orders. So what we did at that time was begin
8 sending some of our orders, and we chose just conversion
9 orders, to send via spread sheet, but continued to do all
10 the new lines and moves and our other order types via warm
11 ordering. As time progressed, when we got into the May
12 time frame same thing began happening with the new line
13 and move orders that now -- now we couldn't even get all
14 of those through in a day and we would have those left
15 over at the end of the day which were just aging for the
16 customer. So at that time the ones that we had left over
17 at the end of the day we would only send those on the
18 spread sheet so that we got as many done via warm ordering
19 as we could.

20 Q Okay. So....

21 A And.....

22 Q I'm sorry, did I interrupt you?

23 A Yeah, I had one bit more.

24 Q Sorry.

25 A That ultimately in June -- ultimately in June ACS told us

1 that they did not want to receive orders in two different
2 ways, and so they shut off the warm ordering ACD phone
3 number and we started submitting all of our orders via
4 spread sheets.

5 Q And that was in June of 2002?

6 A Yes.

7 Q So warm ordering was in place from roughly the end of 1998
8 through June of 2002?

9 A Yes.

10 Q And what benefits does warm ordering provide to GCI and
11 its customers?

12 A Well, the main benefits are to the customer. And those
13 benefits are number one, their order goes into the system
14 at the time that the order is transmitted to ACS, so it
15 immediately goes into their processing system and does not
16 sit and age somewhere. The -- the other main benefit is
17 that you receive a firm order confirmation or the due date
18 in which that order will be completed at the time of the
19 call. Now we have that information which we can relay to
20 the customer who originally placed that order.

21 Q Would you agree that the backlog in service orders began
22 -- or actually let me back up. When did the backlog in
23 service orders begin?

24 A Well, I would describe that as starting in November when
25 -- when we were forced to send orders via spread sheet

1 just to get all of our orders over there.

2 Q And what time period again?

3 A That was November of last year.

4 Q November of last year. And did that coincide with ACS's
5 rate increase for its retail customers?

6 A Yes. Yes, it does.

7 Q What happened following the rate increase?

8 A Well, following the rate increase we had a significant
9 number of customers that wanted to switch their service to
10 GCI. And so at that time the conversion orders began to
11 increase significantly.

12 Q Okay. I don't know if you can answer this generically,
13 but what percentage of the backlog was new line and move
14 orders versus, let's say, conversions? Or actually let's
15 back up. Following the rate increase.....

16 A Yes.

17 Qdo you have an idea of what the composition of the
18 backlog was?

19 A I don't exactly. I was not tracking at that time the
20 total composition of what the backlog was. I was hoping
21 it would be resolved in days.

22 Q Okay. How about today, do you know what the composition
23 of the backlog is today?

24 A What I -- what I do know is in -- what I do know is in the
25 tracking that we have done on -- on the backlog that of

1 the order types -- well, basically the backlog is made up
2 of almost every order GCI sends over because every order
3 goes into the backlog. It goes into the bottom. So if
4 you just look at the composition of all our orders, if you
5 look at residential, for example, which has been a large
6 part of the problem, the residential new line and move
7 orders exceed the number of conversion orders that we have
8 had since June. So in relationship, at least, to those
9 two I can tell you that new line and move orders are more
10 than the conversion orders since June.

11 Q Okay. When the backlog developed back in -- or following
12 the rate increase in November of 2001, did you make any
13 attempts to discuss with ACS management how they planned
14 on alleviating the backlog?

15 A I -- I would say that the very day to day conversations
16 trying to get that backlog resolved were mainly occurring
17 in February is when they aggressively began occurring to
18 try and make something happen and get it resolved. That
19 ultimately resulted in us not being able to resolve that
20 between the two companies. ACS was not providing a plan
21 in which they would solve that problem, so we -- we then
22 -- I met with Wes Carson, their president of ACS, and with
23 our counsel present and in front of the Chair of the RCA
24 Commission and we talked about this problem. A few days
25 later ACS was -- was coming back with things they might do

1 HEARING EXAMINER CLARK: All right. We're back on the
2 record. Mr. Weinstein, could you call your next witness,
3 please.

4 MR WEINSTEIN: Okay. I'll call one last witness, Ms. Dana
5 Tindall.

6 HEARING OFFICER CLARK: Thank you. Ms. Tindall, the court
7 reporter will swear you in.

8 (Oath Administered)

9 MS. TINDALL: Yes, I do.

10 DANA L. TINDALL

11 called as a witness on behalf of GCI, testifies as follows on:

12 DIRECT EXAMINATION

13 COURT REPORTER: Would you state your name for
14 the record, please, and spell your last?

15 A Dana L. Tindall, T as in Tom, i-n-d-a-l-l.

16 COURT REPORTER: Thank you.

17 HEARING OFFICER CLARK: Mr. Weinstein.

18 MR. WEINSTEIN: Thank you.

19 BY MR. WEINSTEIN:

20 Q Ms. Tindall, would you identify what you do for GCI?

21 A I'm senior vice president for legal, regulatory and
22 governmental affairs. In the context of this proceeding I
23 am responsible for overseeing all of GCI's regulatory and
24 legal activity including deciding whether or not to file
25 arbitrations, complaints, our positions on rule makings,

1 during the month of September?

2 A Yes, I see.

3 Q Actually let me take a step back. Do you know what this
4 document is? Sorry about that.

5 A I'm not sure who produced it. I would guess that the RCA
6 produced it for the public meeting that was held a month
7 or so ago -- or, no, actually --.....

8 Q Yeah, that's right.

9 Ayeah, for a public meeting on October 9th apparently.

10 Q Okay. It's a Commission document, is that correct?

11 A It -- that's what it looks like, yes.

12 Q Okay. Now, if we open it up now and turn to the graph --
13 or the bar graph it says total complaints filed during the
14 month of September?

15 A Yes.

16 Q And I'd like to call your attention to the fact that in
17 1999 there were apparently 53 complaints and then 2000 it
18 went down, 2001 went down further and then it exploded in
19 2002.

20 A Yes.

21 Q Do you have any opinion about why consumer complaints
22 exploded in the year 2002?

23 A Yes, I do.

24 Q Okay. And what is that?

25 A I think it's probably fair to say that when ACS raised

1 their rates by 24 percent there was a huge blip in
2 ~~conversion~~ orders that neither they nor we were totally
3 prepared for. However, I believe that that blip in
4 conversion orders paled off pretty quickly and now we see
5 that at least half or maybe the majority of orders are new
6 moves and conversions and they're big and so why all of a
7 sudden for something that is fairly predictable and
8 seasonable would our orders have stopped being processed
9 and that's what I have an opinion on. When ACS bought the
10 local telephone companies that comprise ACS, at that time
11 there was competition only in Anchorage. They felt very
12 strongly that they would be able to keep competition from
13 happening in Fairbanks and Juneau. They felt that to the
14 extent that they put that in analyst reports to their
15 stockholders. They also felt that they would be able to
16 get the Anchorage loop rate up to \$36 a loop. That was
17 also in analysts reports. Despite a whole lot of lawsuits
18 those two things have not come to pass and what has
19 happened instead is ACS has been losing market share at an
20 alarming rate. It's my belief that ACS needs to slow down
21 the market share loss as much as possible and any delay in
22 processing orders helps them in their numbers that they
23 release on a quarterly basis.

24 Q Ms. Tindall, do you think parity is important for
25 competition to flourish?